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ATTORNEYS FOR PLAINTIFF COUNTY OF SANTA CLARA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

COUNTY OF SANTA CLARA,

Case No. 17-cv-00574-WHO

**Plaintiff,**

V.

DONALD J. TRUMP, President of the United States of America, JOHN F. KELLY, in his official capacity as Secretary of the United States Department of Homeland Security, JEFFERSON B. SESSIONS, in his official capacity as Attorney General of the United States, JOHN MICHAEL "MICK" MULVANEY, in his official capacity as Director of the Office of Management and Budget, and DOES 1-50.

### Defendants.

**PLAINTIFF COUNTY OF SANTA  
CLARA'S MOTION FOR LEAVE TO  
FILE A SURREPLY IN OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

Date: July 12, 2017  
Time: 2:00 p.m.  
Dept: Courtroom 2, 17th Floor  
Judge: Hon. William Orrick

Date Filed: February 3, 2017

Trial Date: April 23, 2018

1 Pursuant to Civil Local Rule 7-3(d), Plaintiff County of Santa Clara (“the County”)  
 2 respectfully asks the Court for leave to file a Surreply in response to Defendants’ Reply in  
 3 Support of Defendants’ Motion to Dismiss (Dkt. 136).

4 Defendants’ reply brief makes assertions that are directly contradicted by congressional  
 5 testimony recently provided by Department of Homeland Security officials regarding the meaning  
 6 and scope of Executive Order 13768 and the “sanctuary jurisdictions” that order targets.  
 7 Defendants’ reply brief also contains representations that stand at odds with recent official  
 8 statements made by President Trump. All of these statements are subject to judicial notice, and  
 9 the County intends to raise them at the hearing on defendants’ motion. To provide the Court with  
 10 the benefit of these public and binding statements before the hearing, the County seeks leave to  
 11 file a short surreply, highlighting the statements and attaching transcripts for the Court’s review.  
 12 The County believes this information will aid the Court in deciding the issues presented. *See In*  
 13 *re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 3:14-CV-02510, 2014 WL 7206620, at \*1 n.2  
 14 (N.D. Cal. Dec. 18, 2014) (granting leave to file a surreply “in the interests of completeness and  
 15 judicial efficiency”). The County’s proposed surreply is attached hereto as Attachment A.

16 If the Court is disinclined to allow the County to file a surreply, then, in the alternative,  
 17 the County requests that the Court take judicial notice of the documents attached as Exhibits A  
 18 through D to the proposed surreply brief. Those documents, which consist of official White  
 19 House press releases and transcripts of congressional testimony, are subject to judicial notice, and  
 20 the Court may consider them when deciding defendants’ motion to dismiss. *See Mir v. Little Co.*  
*of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (“[I]t is proper for the district court to take  
 21 judicial notice of matters of public record outside the pleadings and consider them for purposes of  
 22 the motion to dismiss.”); *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998–99 (9th Cir. 2010)  
 23 (judicially noticing information contained on a government website); *321 Studios v. Metro*  
*Goldwin Mayer Studios, Inc.*, 307 F. Supp. 2d 1085, 1107 (judicially noticing records from  
 24 congressional hearings “because they are the types of documents for which the accuracy cannot  
 25 reasonably be questioned.”); Fed. R. Evid. 201(b)(2); *see also* Fed. R. Evid. 201(c)(2) (mandating  
 26  
 27  
 28

1 that the court “must take judicial notice if a party requests it and the court is supplied with the  
2 necessary information”).

3 Dated: July 6, 2017

4 OFFICE OF THE COUNTY COUNSEL,  
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18 Dated: July 6, 2017

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